

Readopt with amendment Env-Wq 1708.10, eff. 5-21-08 (doc. #9162), to read as follows:

Env-Wq 1708.10 Alternatives Analysis; Determination of Net Economic or Social Benefits.

- (a) For purposes of this section, the following definitions shall apply:
- (1) “Activity” means any of the activities listed in Env-Wq 1708.02 as being subject to this part, including all associated construction;
 - (2) “Area in which the water body is located” means the directly affected municipality(ies) and, if necessary to quantify the net social and economic benefits of the activity, one or more of the municipalities that abut the directly affected municipality(ies), as determined by the applicant in consultation with the department;
 - (3) “Directly affected municipality(ies)” means the municipality or municipalities in which the water body that will be impacted by the activity is located; and
 - (4) “High value resource” means a natural or developed resource that is of particular value to the nation, region, state, or area in which the water body is located, including but not limited to state- or federally-listed threatened or endangered species, state or federal parks, public freshwater or saltwater beaches, and lands that are subject to conservation easements.
- (b) For any activity that is determined to result in a significant impact to the existing water quality pursuant to Env-Wq 1708.09, the applicant shall provide documentation in accordance with (c) through (f), below, to demonstrate that:
- (1) Lowering the water quality is necessary to accommodate the activity;
 - (2) The activity will provide net economic or social benefits in the area in which the water body is located; and
 - (3) The net social and economic benefits of constructing and operating or otherwise engaging in the activity outweigh the environmental impact that could be caused by the lower water quality.
- (c) To determine whether the criteria specified in (b)(1)-(3), above, have been met, the applicant shall complete an alternatives analysis as described in (d), below, and submit the analysis and a request for approval of the preferred alternative to the department together with technically and scientifically valid supporting information.
- (d) The alternatives analysis required by (c), above, shall describe the net social and economic benefits, as described in (e), below, and the water quality impacts, as described in (f), below, of constructing and operating or otherwise engaging in the activity and all practicable alternatives, including but not limited to the following:
- (1) Alternative methods of production or operation;
 - (2) Improved process controls;
 - (3) Water conservation practices;
 - (4) Wastewater minimization technologies;
 - (5) Non-discharging alternatives;
 - (6) Improved wastewater treatment facility operation;
 - (7) Alternative methods of treatment, including advanced treatment beyond applicable technology requirements of the Clean Water Act;
 - (8) Alternative sites, and associated water quality impacts at those sites; and

(9) For activities that involve alteration of terrain, alternative site design that incorporates low impact development elements, including but not limited to creating less impermeable area or infiltrating or reusing stormwater.

(e) To determine if the activity will provide net social and economic benefits in the area in which the water body is located, the applicant shall submit information on, and the department shall evaluate, each of the following:

(1) Whether the activity is consistent with municipal and regional master plans and economic development strategies; and

(2) An explanation of the effect that constructing and operating or otherwise engaging in the activity will have, or an explanation of why there will be no effect, on the following factors:

a. Public and social services;

b. Public health and safety;

c. Employment;

d. Tourism and recreation; and

e. Other social or economic factors that are specific to the area in which the water body is located.

(f) To determine the environmental impacts of lower water quality, the applicant shall submit information on, and the department shall evaluate, each of the following:

(1) Relative to designated uses, the sensitivity of existing and designated uses to the effects of constructing and operating or otherwise engaging in of the activity;

(2) Relative to pollutants, whether any pollutants are expected to be discharged as a result of constructing and operating or otherwise engaging in the activity and, if so, the nature of the pollutants and the anticipated fate and transport of the pollutants in the water body;

(3) Relative to water quality, whether water quality is expected to change as a result of constructing and operating or otherwise engaging in activity, and if so, the estimated degree of change in water quality;

(4) Relative to high value resources, whether any high value resources are present that would be affected by constructing and operating or otherwise engaging in the activity, and if so, the degree to which such resources are expected to be affected;

(5) Relative to flow characteristics or hydrologic modifications, whether any alterations to existing flows or other hydrologic modifications are expected as a result of constructing and operating or otherwise engaging in the proposed activity, and if so, the impacts of such alterations or modifications;

(6) Relative to water treatment technology, whether the activity incorporates any such technology other than passive stormwater treatment best management practices and, if so, the reliability of the treatment technology proposed, and the risk management plan for non-standard situations such as accidents, upsets, or failures; and

(7) Relative to any other factors that are specific to the affected water body or the area in which the water body is located, a description of the factor and an explanation of the effect of constructing and operating or otherwise engaging in the proposed activity on that factor.

(g) After reviewing the information submitted pursuant to (c) through (f), above, the department shall make a preliminary determination to:

(1) Approve the request, if it determines that the criteria specified in (b)(1)-(3), above, have been met; or

(2) Deny the request, if it determines that the criteria specified in (b)(1)-(3), above, have not been met.

(h) If the department's preliminary determination is to approve the applicant's request, the department shall provide the opportunity for public comment on its preliminary decision in accordance with Env-Wq 1708.11.

Readopt with amendment Env-Wq 1708.12, eff. 5-21-08 (doc. #9162), to read as follows:

Env-Wq 1708.12 Transfer of Water.

(a) In this section, "transfer" means the intentional conveyance of water from one surface water to another surface water for the purpose of increasing the volume of water available for withdrawal from the receiving surface water. The term does not include the transfer of stormwater, for the purpose of managing stormwater during construction, between basins created or otherwise lawfully used for stormwater detention or treatment, or both, and does not include the discharge of stormwater from a detention or treatment basin to a surface water.

(b) A transfer shall be exempt from (c) and (d), below, unless one or more of the following apply:

(1) The transfer was not in active operation prior to the effective date of the 2011 readoption of this section, as determined pursuant to (f) through (i), below;

(2) The transfer is causing or contributing to a violation of surface water quality standards in the source water or receiving water; or

(3) A change that could impact any designated use of the source water or receiving water is made to the transfer on or after the effective date of the 2011 readoption of this section such that a water quality certification is required under RSA 485-A:12, III or IV.

(c) The transfer of water from one surface water to another shall not be allowed unless all of the following conditions are met:

(1) The transferred water does not contain exotic aquatic species or other species of aquatic life that could result in a violation of Env-Wq 1703.19, relative to the integrity of the biological and aquatic community, in the receiving water;

(2) Existing and designated uses will be maintained and supported in the source water and in the receiving water;

(3) The withdrawal from the source water and transfer to the receiving water either:

a. Will not result in any degradation of water quality; or

b. Have both been reviewed under the process specified in Env-Wq 1708.10 and determined by the department to meet the criteria specified for approval in Env-Wq 1708.10(b)(1)-(3); and

(4) A water conservation plan that meets the water conservation requirements set forth in Env-Wq 2101 has been approved by the department and is being complied with.

(d) Transferred water may be treated to comply with the requirements of this section.

(e) If a transfer is exempt under (b), above, or if all of the conditions specified in (c), above, are met, the transfer of water shall not constitute a discharge under RSA 485-A:8, I, or RSA 485-A:13, I(a).

(f) A transfer shall be deemed to have been in active operation prior to the effective date of the 2011 readoption of this section if all of the following are true:

- (1) The infrastructure necessary for the transfer is in place and in usable condition;
- (2) Water has been transferred for at least one day in each of at least 3 years from 2000 through 2011; and
- (3) At the time of its original initiation, the transfer complied with applicable legal requirements.

(g) If a transfer does not meet the conditions specified in (f), above, the person responsible for the transfer may request the department to make a determination that the transfer was in active operation by submitting the following information in writing:

- (1) The reason(s) why the infrastructure necessary for the transfer is not in place or is not in usable condition, if applicable;
- (2) The total time span, in years, over which the transfer has occurred from the first known transfer to the present;
- (3) The most recent year during which the transfer occurred; and
- (4) Why, based on the information provided in (1)-(3), above, it would be a fair and just result for the department to determine that the transfer qualifies as a transfer that was in active operation prior to the effective date of the 2011 readoption of this section.

(h) If the department determines, based on information provided pursuant to (g), above, that it would be fair and just to determine that the transfer qualifies as a transfer that was in active operation prior to the effective date of the 2011 readoption of this section, then the department shall make that determination.

(i) The department shall notify the person who requested a determination pursuant to (g), above, in writing of its decision.

APPENDIX

Rule Section(s)	State Statute(s) Implemented	Federal Statute Implemented
Env-Wq 1708.10; Env-Wq 1708.12	RSA 485-A:6, I; RSA 485-A:8, VI	33 U.S.C. 1251 <i>et seq.</i>